

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of: Examiner: Danielle D. Sullivan  
Rolf Kawa, et al. Group Art Unit: 1616

Application No.: 10/511,633  
(Conf. No. 8614) Attorney Docket No.: C 2609 PCT/US  
(S&L File No. P40043 USA)

Filed: May 6, 2005

Title: SUN PROTECTING EMULSION  
PROVIDED WITH A FOAM DISPENSER

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FILED ELECTRONICALLY ON AUGUST 12, 2008

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Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO OFFICE ACTION DATED MAY 14, 2008**

Dear Sir:

We are responding to the May 14, 2008 Office Action where the Examiner rejected all the pending claims (21-25 and 27-38) for obviousness over Polovsky in view of Ansmann (claims 34-38), or Polovsky in view of Ansmann in further view of Van der Heijden (claims 21-25 and 27-33). We disagree with those rejections.

The Examiner seems basically to be saying that polyglycerol poly-12-hydroxystearate is equivalent to alkyl glucosides (citing those two kinds of emulsifiers from a long list of other

emulsifiers in Ansmann), and saying that Polovsky teaches the all of the formulation claimed except that Polovsky uses alkyl glucosides not polyglycerol poly-12-hydroxystearate. The Examiner cited Van der Heijden for the device he discloses.

If all the emulsifiers cited by Ansmann (at col. 4 line 40 through col. 5 line 17, embracing 13 different classes and literally thousands of permutations) were truly equivalent, then why did Ansmann list so many? All the members in that list can't have the same properties. Common sense suggests otherwise.

As the Examiner appreciates, the claimed polyglycerol poly-12-hydroxystearate falls within Ansmann's class 6 "polyol esters" (see, Ansmann col. 4 lines 59-62). So does polyglycerol polyricinoleate (see, Ansmann col. 4 line 60). Applicants evaluated both poly-12-hydroxystearate and polyglycerol polyricinoleate in the claimed system (compare Example 3 page 30 to the Comparison Example at page 31-32 of Applicants' specification). The former produces a composition that is foamable, whereas the latter does not. Thus, not all the emulsifiers listed by Ansmann are equivalent. The Examiner's underlying assumption is incorrect, accordingly.

Because Applicants have compared two members of the same class 6 cited by Ansmann and found them quite different when formulated to try and create a *foamable* composition, the Examiner cannot now maintain that polyglycerol poly-12-hydroxystearate is equivalent to an alkyl glucoside, when those two members are of quite different classes, according to Ansmann. Thus, the combination of Polovsky in view of Ansmann cannot be used to support either of the Examiner's obviousness rejections, and we request that they be withdrawn and this case allowed.

Reply to Restriction Requirement

Attorney Docket No. C 2865 US  
(S&L File No. P400082 USA)

If any additional fees are required to further the prosecution of this application, the Office is authorized to charge such fees to Deposit Account No. 19-5425.

Respectfully submitted,

Date: August 12, 2008

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